

Attorney Docket No. 9798495-0017 (Formerly P99,1996)

U.S. Serial No. 09/543,949

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

U.S. Patent Application of:  
G. Manderfield, Jr.

Serial No.: 09/543,949

Filed: April 6, 2000

For: **MOLDABLE CONTAINER  
WITH BULGING SIDES AND  
FEET**

Examiner: N. Eloshway

Group Art Unit: 3727

**DECLARATION OF A PERSON SKILLED IN THE ART**

Dear Sir:

The below-signed person skilled in the art, subject to penalties of perjury, does hereby declare and state, as follows:

1. I have been actively involved in the relevant field of plastic container related research and development for thirty-seven years working for companies such as Owens Illinois, American Can Company and Consolidated Container Corporation.

2. In have been named as an inventor on at least five patents in and related to plastic containers.

3. I have now had the opportunity to receive and review the Examiner's comments rejecting the presently pending claims in the present application in regard to the following items of prior art for purported obviousness under 35 U.S.C. § 103:

*Manca* (U.S. Patent No. D381,561)

*Brazis et al.* (U.S. Patent No. 5,203,836)

*Chen* (U.S. Patent No. 5, 549,210)

*Valyi* (U.S. Patent No. 5,939,153).

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4. I have reviewed each of the above prior art patents over which the Examiner has rejected the presently pending claims for purported obviousness under 35 U.S.C. § 103. Based upon that review, I have concluded as one of at least ordinary skill in the art that none of the above patents teaches or suggests important aspects of the present invention, and specifically there is no teaching or suggestion of a blow molded container having bulging sidewalls. Further, there is no teaching or suggestion of a blow molded container with bulging sidewalls that can withstand a hot-fill or retort application without incorporating expansion members. Additionally, there is no teaching or suggestion of a container having a sidewall diameter larger than the height of the container wherein the opening of the container is nearly the same size of the diameter.

5. In particular and with regard to U.S. Patent No. D381,561 to *Manca*, that patent teaches a very different container having an opening substantially smaller than the sidewall diameter rather than an opening nearly the same size as the diameter of the sidewall. Accordingly, the *Manca* reference does not teach the same basic structure or features of the present invention into which the user could easily scoop or dip the contents out of the pot. In light thereof, it cannot be properly said that the presently pending claims of the present invention are to be rendered "obvious" over the *Manca* patent.

6. With respect to the rejections involving the *Brazis et al.* (U.S. Patent No. 5,203,83), *Chen* (U.S. Patent No. 5, 549,210) and *Valyi* (U.S. Patent No. 5,939,153) references, these patents teach thermo-molding or injection molding. Under thermo-molding or injection molding, the bulging sidewalls of the present invention would be extremely difficult and not economically viable to form and extract. To try to form the present invention under thermo-

molding or injection molding would require expensive tooling, poor cycle times and poor material distribution. It cannot be properly argued that there is somehow a teaching or suggestion to one skilled in the art that critical characteristics of the presently pending claims of the present invention are allegedly set forth.

7 It would be necessary for the cited references to be entirely dissected and restructured to create (albeit in hindsight) the Applicant's structure. Finally, there is no teaching or suggestion in the cited references that a wholesale reconstructing should be done. In light thereof, it cannot be properly said that the presently pending claims of the present invention are to be rendered obvious over the cited references.


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8. In addition to the lack of teaching of the present invention in any of the cited references, it is likewise clear to those skilled in the art that the teachings of those prior art patents constitutes significant "teaching away," where the cited prior art references teach a different fundamental structure.

9. Based on the above review of the Specification and presently pending claims of the present invention, and each item of cited prior art, as discussed above, it is concluded that, as one skilled in the art, the above references do not teach or suggest the Applicant's invention.

I declare under penalty of perjury that the foregoing is true and correct.

Date: 8 NOVEMBER, 2001

By:   
Gregory Fehn

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